

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

IN RE 22ND CENTURY GROUP, INC.
DERIVATIVE LITIGATION

Lead Case No. 1:19-cv-00479-JLS

JOINT STATUS UPDATE

Plaintiffs Stephen Mathew and Cindy Maloney, the Executrix of the Estate of Melvyn Klein (“Plaintiffs”), nominal defendant 22nd Century Group, Inc. (“22nd Century”), and individual defendants James W. Cornell, Richard M. Sanders, Nora B. Sullivan, Henry Sicignano, III, and John T. Brodfuehrer (together with 22nd Century, the “Defendants”), pursuant to the Court’s February 15, 2023 Order (ECF No. 23, the “Order”), hereby submit the following joint status update:

1. The above-referenced derivative action (the “Derivative Action”) was stayed pending the close of fact discovery in the related securities class action captioned, *Bull v. 22nd Century Group, et al.*, Case No. 1:19-cv-01285 (W.D.N.Y.) (the “Securities Class Action”). ECF No. 23, ¶ 2.

2. On March 21, 2023, plaintiffs and defendants in the Securities Class Action and the Derivative Action participated in a mediation before Jed Melnick, Esq. of JAMS ADR (“Mediator”) that resulted in the settlement of the Securities Class Action, pending approval of the settlement agreement by the Court. On October 23, 2023, the Court approved the Class Action settlement and dismissed the Class Action with prejudice.

3. On September 1, 2023, Plaintiff Kenneth Troup filed a shareholder derivative action alleging substantially similar facts and asserting similar causes of action as those asserted in the Derivative Action against the Defendants and James Mish, Michael Koganov,

Anthony Johnson, Lucille Salhany, and Andy Aron captioned *Troup v. Sullivan, et al.*, Case No. 1:23-cv-00916-JLS (W.D.N.Y.) (the “Troup Action”).

4. On February 9, 2024, Defendants moved this Court to consolidate the Troup Action with this Derivative Action, pursuant to the Court’s August 15, 2019 Order (ECF No. 10).

5. The parties in this Derivative Action and the Troup Action have been engaging in ongoing settlement discussions, and the parties in the Derivative Action attended a half-day mediation on October 17, 2023.

6. The parties in this Derivative Action executed a memorandum of understanding regarding settlement and are continuing to finalize a stipulation of settlement for approval by the Court pursuant to Federal Rule of Civil Procedure 23.1(c).

DATED: May 13, 2024

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